IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.1066 of 2004

Tamilnadu State Transport Corporation
(Kumbakonam II Division)
Trichy, rep. by its General Manager. .. Petitioner/Respondent

vs.

1.Dr.Vaithiyanathan
2.Mrs.Vasantha Vaidhyanathan
3.The Divisional Manager
United India Insurance Co.Ltd.
Anna Nagar,Chennai.101. .. Respondents/Petitioners
1 and 2 and
Proposed Respondents

Revision Petition filed against the order dated 20.4.2004, passed in M.P.No.1636/2004 in M.C.O.P.No.4638/2000 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Petitioner : M/s.R.Arunmozhi

For Respondents : Mr.P.B.Ramanujam, for R1 & R2.

Mr.K.S.Narasimhan, for R3.

ORDER:

This Revision Petition has been filed against the order dated 17.4.2006 passed in M.P.No.1636/2004 in M.C.O.P.No.4638/2000 on the file of the Motor Accidents Claims Tribunal (Chief Small Causes Court), Chennai.

2. The Tamil Nadu State Transport Corporation is the revision petitioner in the above revision petition filed under Article 227 of the Constitution of India. Respondents 1 and 2 herein filed a claim petition in M.C.O.P. No.4638/2000 on the file of the Motor Accidents Claims Tribunal, (Chief Small Causes Court, Chennai) against the revision petitioner herein claiming a compensation of

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Rs.1 crore for the death of their son who was fatally killed in an accident on 20.3.2000. The revision petitioner filed a petition in M.P.No.1636/2004 before the tribunal under Order 1 Rule 10(2) of C.P.C. to direct respondents 1 and 2 to implead the necessary parties namely, the owner of the car and the third respondent herein, the Divisional Manager, United India Insurance Co. Chennai.101. This application was resisted by respondents 1 and 2 by contending that the owner of the vehicle is none other than the 1st claimant before the tribunal and the insurance company who insured the car need not be a party as they claim compensation only against the revision petitioner/transport corporation. The tribunal by its order dated 20.4.2004 dismissed the M.P.No.1636/2004 and aggrieved by this order, the transport corporation has filed the above revision petition.

3. Heard the learned counsel for the revision petitioner, the learned counsel for respondents 1 and 2 and the learned counsel for the 3rd respondent insurance company. I have also gone through the documents filed and the judgments referred to in support of their submissions.

4. The learned counsel for the revision petitioner strenuously contended that the insurance company is a necessary party and he relied on the following decisions reported in -

1) (1999(3)L.W.811 (Marudhu Pandiyar Transport Corporation v. M.Veerammal and another)

2) 2006(3) CTC 122 (Bijoy Kumar Dugar v. Bidyadhar Dutta)

5. The learned counsel for respondents 1 and 2 submitted that the Civil Revision Petition itself is not maintainable under Article 227 of the Constitution of India as no serious prejudice is caused to the revision petitioner by the order of the Tribunal dated 20.4.2004. The learned counsel for the insurance company supported the order of the tribunal and he relied on the decisions of this court reported in 1993 ACJ 522 (New India Assurance Co.Ltd. v. Meenal) and 1996 ACJ 1151 (National Insurance Co. ltd. v. R.Mohan) and the decision of the Hon'ble Supreme court reported in 2004 AIR SCW 5438 (Dhanraj v. New India Assurance Co.Ltd.) in support of his contentions.

6. I have carefully considered the submissions of the learned counsel appearing for the parties.

7. In 1999(3) L.W. 811 (cited supra), this court held that when both the bus drivers in that case are negligent, consequently both the transport corporation are liable to pay compensation as they were equally responsible for the accident.

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8. In 2006(3) CTC 122 (cited supra), the Hon'ble Supreme Court held that when there is a head-on-collision between two vehicles, the drivers of both the vehicles should be held responsible to have contributed equally to the accident.

9. The above two decisions deal with the contributory negligence on the part of both the drivers when there is head-on-collision between two vehicles and they are not helpful to the revision petitioner to contend that the 3rd respondent insurance company should be added as a party before the claims tribunal.

10. In 1996 ACJ 1151 (cited supra), a Division Bench of this court held that when the accident was caused only because of the negligence of the claimant himself, he is not entitled to claim any compensation.

11. In 1993 ACJ 522 (cited supra), a Division Bench of this court held that the insurance company is not liable in the absence of any liability being imposed on the owner.

12. In 2004 AIR SCW 5438 (cited supra), the Hon'ble Supreme Court held that when the policy does not cover any risk for injury to the owner himself, the owner of the vehicle can claim compensation only for the damages to the vehicle and not for injury to the person of the owner.

13. The above decisions relied on by the learned counsel for the insurance company do not deal with the question whether the insurance company is a necessary party or not in a case of this nature.

14. Admittedly, claim petition has been filed only against the revision petitioner and the revision petitioner cannot dictate terms as to who should be added as a party in the claim petition. It is for the claimant to decide the parties against whom they seek compensation and therefore I do not find any illegality nor irregularity in the order of the tribunal dated 20.4.2004. Moreover, as rightly pointed out by the learned counsel for respondents 1 and 2, 1st respondent is the owner of the car who is already before the tribunal as a claimant and therefore the prayer itself is not properly worded in the petition under Order 1 Rule 10 (2) C.P.C.

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15. Therefore, in the result, the C.R.P. is dismissed as devoid of merits. No costs. C.M.P.No.10631/2004 is also dismissed. The tribunal is directed to dispose of the claim petition within two months from the date of receipt of copy of this order.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai. (with records)

2. The Record Keeper,
VR Section,
High Court, Madras.

3. The Registrar,
Court of Small Causes,
Chennai.

1 cc to Mr.K.S.Narasimhan, Advocate, SR.45955
1 cc to Mr.P.B.Ramanujam, Advocate, SR.45483
1 cc to Mr.R.Arunmozhi, Advocate, SR.45394

akm (co)

dv/11.10.06

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